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ABSTRACT

This pamphlet provides general information concerning the application of the Fair Labor Standards Act to employees of preschool centers. Included is a discussion of: (1) Basic Monetary Requirements, including minimum wages and facilities furnished to the preschool employees, (2) Equal Pay Provisions, (3) Overtime, (4) Hours Worked, (5) Exemptions, (6) Child Labor Provisions, (7) Records, (8) Poster, which briefly outlines the Act's basic requirements, and (9) Enforcement. Brief descriptions of the Age Discrimination in Employment Act and the Federal Wage Garnishment Act are discussed, and a list of publications is provided. (SB)

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UNDER THE FAIR LABOR STANDARDS ACT JULY 1972

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U.S. DEPARTMENT OF LABOR
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PRESCHOOLS UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act contains minimum wage, equal pay, maximum hours, overtime pay, recordkeeping requirements, and child labor standards. This pamphlet provides general information concerning the application of this Act to employees of preschool centers.

The Act is administered by the U. S. Department of Labor's Wage and Hour Division. If you have specific questions about the statutory requirements, consult the nearest office of the Division for answers to your questions. Also, the Division's publications referred to herein may be obtained from any office of the Division.

GENERAL STATEMENT

The Education Amendments of 1972 (amending the Higher Education Act of 1965), which became effective on July 1, 1972, amended the Fair Labor Standards Act and extended enterprise coverage to all activities performed in connection with the operation of a preschool (whether public or private or whether operated for profit or not for profit) regardless of the annual dollar volume of the institution, provided there are in the enterprise employees engaged in commerce or in the production of goods for commerce, including employees who handle, sell or otherwise work on goods which have been moved in or produced for such commerce.

This condition for coverage under the Act is met if the enterprise has two or more employees whose duties regularly include work related to ordering or receiving materials or supplies used in its operations such as food, books, toys, etc., from other States, or handling, selling, or otherwise working on such goods which have originated outside the State. (Note: Any establishment which has as its only regular employees the owner and his/her immediate family is not considered an enterprise under the Act.)

A preschool is any enterprise as discussed above which provides for the care and protection of infants or preschool children outside their own homes during any portion of a 24-hour day. The term "preschool" includes any establishment or institution which accepts for enrollment children of preschool age for purposes of providing custodial, educational, or developmental services designed to prepare the children for school in the years before they enter the elementary school grades.

This includes day care centers, nursery schools, kindergartens, head start programs and any similar facility primarily engaged in the care and protection of preschool children.

Employees of preschools employed at central locations where the operations of the centers are administered or serviced and whose work involves duties in connection with the operation of the centers are within the coverage of the Act. For example, coverage extends to clerical workers performing duties in connection with the purchasing or distribution of supplies or equipment for the centers, and to mechanics servicing vehicles or other equipment used in the centers' operations.

Volunteer services: Individuals who volunteer their services, usually on a part-time basis, to a preschool not as employees or in contemplation of pay are not considered employees within the meaning of the Act. For example, mothers may assist in a preschool as a public duty to maintain effective services for their children, or fathers may drive a bus to take a group of children on a trip without creating an employer-employee relationship. On the other hand, a bookkeeper could not be treated as an unpaid volunteer bookkeeper for the employing institution in the same workweek in which he is also an employee.

Nuns, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in a preschool operated by their church or religious order shall not be considered to be employees. However, the fact that such a person is a member of a religious order does not preclude an employee-employer relationship with a State or secular institution.

BASIC MONETARY REQUIREMENTS

Minimum wages: Employees of preschools must be paid the minimum wage established by the Fair Labor Standards Act. Currently this minimum wage is \$1.60 but new legislation is in the Congress establishing a higher rate. Employees in Puerto Rico must be paid the minimum rates established by the wage order applicable to the Education Industry.

Facilities Furnished to Employees of the preschool: Where meals, lodging, or other facilities are customarily provided for the benefit of the workers, their reasonable cost or fair value is considered as wages paid, under section 3(m) of the Act. This section also provides that such costs shall not be included as part of wages to the extent that they are excluded therefrom by the terms of a bona fide collective bargaining agreement. The reasonable cost is defined in the Regulations, Part 531, as the actual cost to the employer without a profit.

The cost of facilities furnished by the employer primarily for the employer's benefit instead of the worker's, may not be included in computing wages. For example, the cost of furnishing and laundering uniforms, where required by the employer or by the nature of the job, may not be charged to the employee where such charge would reduce the wages paid in any workweek below the required minimum wage.

EQUAL PAY PROVISIONS

Under the equal pay provisions of the Act, the employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than he pays employees of the opposite sex in the same establishment, for doing equal work on jobs requiring substantially equal skill, effort, and responsibility, which are performed under similar working conditions. All employees working within an establishment in which employees are subject to the minimum wage provisions of the Act are entitled to the benefits of the equal pay provisions. Also entitled to the benefits of the equal pay provisions, are employees employed in bona fide executive, administrative, or professional capacities (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), as defined in 29 CFR Part 541 even though otherwise exempt from the Act's minimum wage and overtime pay provisions.

Exceptions are provided under the Act where it can be shown that a wage differential is based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or on any other factor other than sex.

An employer who is paying a wage differential in violations of the equal pay provisions of the Act may not reduce the wage rate of any employee in order to comply with these provisions. Wages withheld in violations of the equal pay provisions have the status of unpaid minimum wages or unpaid overtime compensation under the Act, and back wages due under the equal pay provisions are subject to the same methods of recovery as any other wages due under the Act.

The law prohibits any labor organization, or its agents, representing employees of an employer having employees subject to the minimum wage provisions of the Act, from causing or attempting to cause the employer to discriminate against an employee in violations of the equal pay provisions.

OVERTIME

The Fair Labor Standards Act requires the payment of at least one and one-half times the regular rate of pay to covered, nonexempt employees after 40 hours of work in a workweek. It does not require that an employee be paid each week. The employer may make his wage or salary

payment at other regular intervals, such as every two weeks, every half month, or once a month. What the Act does require is that both minimum wage and overtime pay must be computed on the basis of hours worked each workweek standing alone. The employer cannot average the hours of work over two or more workweeks.

Overtime pay must normally be paid on the pay day for the pay period in which it is worked. Overtime hours may not be accumulated and taken off at any time subsequent to the period in which it is worked.

Before overtime pay can be computed it is necessary to determine the employee's regular rate, since the Act requires payment for overtime hours at not less than one and one-half times the regular rate of pay. The regular rate of pay may not be less than the statutory minimum, and includes all remuneration for employment except certain payments excluded by the law itself.

The regular rate for an employee paid solely on an hourly rate is the employee's hourly rate. One and one-half times this rate must be paid to covered, nonexempt employees after 40 hours of work in a workweek. For an employee who is paid a salary for a specified number of hours a week, the regular rate is obtained by dividing the weekly salary by the specified hours. One-half this rate is due the employee for each hour over 40 up to the specified number of hours, after which time and one-half the regular rate is due. If a salary is paid as straight time pay for whatever number of hours is worked in a workweek, and is large enough to provide pay at or above the minimum wage rate for the longest week worked by the employee, the regular rate is obtained by dividing the salary by the total hours worked each week. One-half this rate is due for all hours worked in excess of 40 in the workweek. If a salary is paid on other than a weekly basis, the weekly pay must ordinarily be determined in order to compute the regular rate and overtime pay. For instance, if the salary is paid for a half month, multiply the salary by 24 and divide the product by 52 to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

The Act does not require premium pay for Saturday, Sunday, or holiday work as such, or vacation or severance pay, or a discharge notice; nor does it set any limit on the number of hours of work by men or women 16 years of age or over. (For a more complete discussion on overtime compensation see WH Publication No. 1325 "Overtime Compensation".)

HOURS WORKED

An employee who is subject to the Act in any workweek must be paid in accordance with its provisions for all hours worked in that workweek. In general, hours worked includes all the time an employee is required to be on duty or on the employer's premises or at a prescribed workplace, and all the time during which he is suffered or permitted to work for the employer, including any work performed at home by clerical employees.

EXEMPTIONS

Executive, administrative, and professional employees: Employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), as defined in Regulations, Part 541, are exempt from the minimum wage and hours provisions of the Act but are covered by the equal pay provisions.

CHILD LABOR PROVISIONS

The Act sets a basic 16-year minimum age for most occupations. An 18-year minimum applies to hazardous occupations, except in agriculture. A 16-year minimum age applies to agricultural employment during school hours and in hazardous agricultural occupations at any time. There is no minimum age for nonhazardous farm work outside school hours. Minors 14 and 15 years old may work outside school hours in a variety of nonmanufacturing and nonhazardous jobs for limited hours and under other specified conditions of work. Child Labor Bulletin No. 101 describes these standards. When both State and Federal laws apply, the higher standards prevail.

Employers are urged to obtain state age or employment certificates generally issued by public school officials to show that a minor is the legal age for the job.

RECORDS

Employers are required to keep records on wages, hours, and other items listed in the recordkeeping regulations (Regulations, Part 516). No particular form of records is required. Time clocks are not required, but all hours worked each workday and the total hours worked each workweek must be recorded in some matter for nonexempt employees.

POSTER

The covered preschool must display a Notice to Employees where the employees may readily see it. This poster, which briefly outlines the Act's basic requirements, may be obtained free from the nearest office of the W-H Division.

ENFORCEMENT: Authorized representatives of the W-H Division may investigate and gather data regarding wages, hours, and other conditions and practices of employment. The Act provides these methods of recovering unpaid minimum and/or overtime wages: (1) the Administrator may supervise the payment of back wages; (2) in certain circumstances the Secretary of Labor may bring suit for back pay upon the written request of an employee; (3) an employee may sue for back wages and an additional sum as liquidated damages plus attorney's fees and court costs; and

(4) the Secretary of Labor may also obtain a court injunction restraining violations of the law, including the unlawful withholding of proper minimum wage and overtime pay.

It is a violation of the law to discharge or otherwise discriminate against an employee for filing a complaint or participating in a proceeding under the law.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000 on each count. A second conviction for such a violation may result in imprisonment.

A 2-year statute of limitations applies to the recovery of back wages except in the case of willful violations, in which case a 3-year statute of limitations would be applicable.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT

This Act (which is also enforced by the W-H Division) promotes the employment of the older worker based on ability rather than age; prohibits arbitrary age discrimination in employment; and helps employers and employees find ways to meet problems arising from the impact of age discrimination in employment, based on age, by employers of 25 or more persons in an industry affecting interstate commerce, employment agencies serving at least one such employer, and labor organizations with 25 or more members in an industry affecting interstate commerce.

Most individuals who are at least 40 but less than 65 years of age are protected from age discrimination in matters of hiring, discharge, compensation, or other terms, conditions, or privileges of employment.

THE FEDERAL WAGE GARNISHMENT LAW

The Federal Wage Garnishment Law (Title III of the Consumer Credit Protection Act), effective July 1, 1970, sets restrictions on the amount of an employee's earnings that may be deducted in any one week through garnishment proceedings and on discharge from employment by reason of garnishment. When an employee's disposable earnings--the part remaining after deductions required by law are made--are more than \$64 a week, up to 25 percent of the disposable earnings may be garnished. Where the disposable earnings are \$64 or less, only the amount over \$48 may be garnished. This law does not change most garnishment procedures established by State law, nor does it annul or affect any provision of a State law that provides greater restrictions on garnishments than under Federal law.

LIST OF PUBLICATIONS

Fair Labor Standards Act
Coverage under the Fair Labor Standards Act,
WH Publication 1358

Recordkeeping Regulations, 29 CFR 516
Wage Payments under the Fair Labor Standards
Act, Regulations, 29 CFR Part 531
Executive, Administrative, Professional Employee
and Outside Salesman Exemptions, WH Publication 1363
Overtime Compensation, WH Publication 1325
Hours Worked, WH Publication 1344
Equal Pay for Equal Work, 29 CFR Part 800
Child Labor Bulletin 101
Age Discrimination in Employment, 29 CFR 850
and Part 860
The Federal Wage Garnishment Law, WH Publication 1324

This publication is for general information and is not to be considered in the same light as official statements of position contained in Interpretative Bulletins and other such releases formally adopted and published in the Federal Register. The information in this publication will later be incorporated in one together with information related to elementary and secondary schools.

Wage-Hour Reference Service

A looseleaf regulations system, Federal Labor Laws, containing all the laws administered by the Wage and Hour Division together with the regulations and interpretative bulletins pertaining to them is available. It supplies materials on the Fair Labor Standards Act, Federal Wage Garnishment Law, Age Discrimination in Employment Act and labor standards for employees of government contractors. Among the latter are the Service Contract Act, Walsh-Healey Public Contracts Act, Davis-Bacon Act and Contract Work Hours and Safety Standards Act.

Federal Labor Laws is a handy reference source for employers, labor unions, accountants, attorneys and labor consultants. The publication covers such topics as minimum wages, overtime pay, child labor, equal pay and recordkeeping. It explains and deals with the types of employment which are subject to each of the laws. The looseleaf system provides for easy updating of the materials, as subscribers will receive amended pages when changes are made. A subscription includes all amendments which may be issued during a two-year period.

Federal Labor Laws will be sent by mail for \$12.00 payable in advance. Make check or money order payable to the Superintendent of Documents. Orders may now be sent direct to Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402.